

Award No. 134
Docket No. 125
2-D&RGW-CM-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That seniority of Clarence Miller be changed from March 15, 1927, to June 19, 1924, the original date of his employment as a carman.

EMPLOYEES' STATEMENT OF FACTS: Clarence Miller was hired as a carman at 63¢, June 19, 1924, and a service letter from Mount Vernon Manufacturing Company is on file with his application. He worked on the rip track and was furnished a helper and completed all work on any car assigned to repair. He got all the increases in wages until April 1, 1929, when he was reclassified to second class man on account of being found working on the rip track and given only 3¢ raise, while train yard and air men were given 4¢ raise.

POSITION OF EMPLOYEES: Clarence Miller, having established his seniority as a carman, and being furnished a helper, completed any car assigned to him, either heavy or light, claims the company had no right to reclassify him and compel him to start a first class date. The date he first was called to the yard to inspect cars was March 15, 1927, as he was getting the minimum first class rate until reclassified. There was no rule in the agreement existing at that time that provided for loss of seniority when working in a lower class.

During the period in question there was an overlapping of rates among first and second class mechanics, as shown by the following classification, Rule 51, Freight Carmen's Work, Special Rules—Classification and Rates:

"First Class: Building, rebuilding and heavy repairs of freight, work and caboose cars, either all steel, or steel underframe and steel superstructure frame, or all wooden equipment, doing the necessary laying out, with or without drawings, including air piping, cleaning, oiling, stencilling and testing air brakes (including passenger cars); all car inspecting, both passenger and freight, and all work that may be connected therewith. (Men to do inspecting must be able to speak and write the English language and have a fair knowledge of A. R. A. Rules and Safety Appliance Laws.) Operating woodworking machines, located in repair tracks; shop carpenter doing all miscellaneous carpenter work, and any other work of same or lower rates which employe is capable of doing.

Rate: 63 and 75 cents per hour, according to character of work produced by workmen, both with respect to quality and quantity of output.

During the month of November, 1934, the employes made claim that Mr. Miller's seniority date as a first class freight carman should be as of the date he entered service, viz., June 19, 1924.

As result of this protest a check was made of Mr. Miller's services and it developed that he was transferred to the train yard in Pueblo on March 15, 1927, to fill a vacancy caused by injury to first class Freight Carman Orr. As result of this check of the records Mr. Miller was given a seniority date as first class freight carman of March 15, 1927, instead of August 24, 1929.

On April 1, 1929, at the time Mr. Miller was given the 3¢ per hour increase granted second class freight carmen he made no protest of record either as to his payroll classification or his seniority date. The records indicate that Mr. Miller's seniority date as a first class freight carman, viz., March 15, 1927, is correct, and the carrier contends that Mr. Miller's claim for a seniority date of June 19, 1924, as a first class freight carmen is not justified by the records.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute waived right of appearance at hearing thereon.

The Railway Labor Act (as approved June 21, 1934), among its many provisions, prescribes:

"General Purposes

"Sec. 2 * * *(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Also:

"General Duties

"Second. All disputes between a carrier or carriers and its or their employes shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employes thereof interested in the dispute."

This dispute was handled in accordance with the above provisions of the amended Railway Labor Act and properly settled between the duly authorized representatives of the employes and the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 2nd day of February, 1937.